



INTERIOR BOARD OF INDIAN APPEALS

Raphael K. Iron v. Billings Area Director, Bureau of Indian Affairs

32 IBIA 118 (04/01/1998)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

RAPHAEL K. IRON,
Appellant

v.

BILLINGS AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Vacating Decision
: and Remanding Case

:

:

: Docket No. IBIA 98-74-A

:

:

: April 1, 1998

This is an appeal from a September 9, 1997, decision of the Billings Area Director, Bureau of Indian Affairs, concerning leases of Crow Allotment Nos. 428B, 429C, 2300, 2812, 2813, and 2814. Appellant was apparently not given proper notice of the decision at the time it was issued. In a letter received by him on February 20, 1998, he was given notice of the September 9, 1997, decision and advised of his right to appeal to the Board. Appellant filed a notice of appeal, which was received by the Board on March 16, 1998.

On March 27, 1998, the Board received a request from the Area Director to remand this matter to him for further consideration. The Area Director's request states that, on March 24, 1998, he "rescinded and withdrew" the September 9, 1997, decision and that "[i]t follows that [the Board] 'presently has nothing to review in this matter.'" He encloses a copy of his March 24, 1998, letter to Appellant, purporting to rescind and withdraw the September 9, 1997, decision.

The Area Director is reminded that, once the September 9, 1997, decision had been appealed to the Board, he lost authority to rescind or withdraw that decision. Burlington Northern Railroad v. Acting Billings Area Director, 31 IBIA 180 (1997), and cases cited therein. Accordingly, his March 24, 1998, attempted rescission/withdrawal is a nullity and without any force or effect.

The Board treats the Area Director's request as a request that the Board vacate his September 9, 1997, decision and return this matter to him for further consideration.

The Area Director's March 24, 1998, letter to Appellant states that he believes it necessary to reconsider the September 9, 1997, decision in light of additional facts and legal arguments which have been presented to him. Under the circumstances, the Board finds that this matter should be remanded to the Area Director for reconsideration in light of the new information.

Prior to issuing a new decision, the Area Director shall give all parties notice of the additional facts and legal arguments he has received, and an opportunity to comment on them, under the procedures in 25 C.F.R. § 2.21(b).

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's September 9, 1997, decision is vacated, and the matter is remanded to him for further consideration.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge